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IN THE UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF UTAH, CENTRAL DIVISION

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GARRY PENNINGTON, et al.,	:	
Plaintiffs,	:	<b>MOTION TO STRIKE AND</b>
	:	<b>MOTION TO DISMISS</b>
vs.	:	Case No. 2:10-cv-497
CITY OF WEST JORDAN, et al.,	:	Judge Dee Benson
Defendants.	:	
	:	

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Pursuant to DUCivR 7-1 and Fed. R. Civ. P. 12(b)(6), defendants, City of West Jordan (the “City”), West Jordan Police Department (the “WJPD”), Police Chief Ken McGuire (“McGuire”) and Sergeant Travis Rees (“Rees”) (collective referred to as the “WJCity Defendants”), respectfully submit this combined Motion to Strike and Motion to Dismiss. The WJCity Defendants move to strike paragraphs 31, 32, 71, 75, 76, 82, 83, 84, 85, 86, 90, 91, 92, 93, 94, 123, 124, 125, 127, 130, 131, 132, 133 and 135 of the amended complaint because they are conclusory and are not supported by any facts alleged in the amended complaint. Furthermore, the WJ City Defendants move to dismiss the amended complaint in its entirety

pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure because plaintiffs have failed to allege: (1) the violation of a constitutional right; (2) a clearly established constitutional right; (3) a constitutional right and the violation of such a right with the necessary specificity; (4) any action by the WJCity Defendants violating any constitutional rights; and (5) a protected property interest individual to plaintiffs.

Furthermore, the WJCity Defendants are entitled to qualified immunity, and the WJPD is not a proper party to this action and plaintiffs' amended complaint should be dismissed.

Respectfully submitted this 28<sup>th</sup> day of October, 2010.

/s/  
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Jeffrey Robinson  
West Jordan City Attorney  
David Bernstein  
Civil Litigator  
Attorneys for City of West Jordan

## CERTIFICATE OF SERVICE

I hereby certify that on this 28<sup>th</sup> day of October, 2010, I electronically filed this combined **MOTION TO STRIKE AND MOTION TO DISMISS** for defendants, City of West Jordan, West Jordan Police Department, Chief Ken McGuire and Sergeant Travis Rees, with the Clerk of the Court using the CM/ECF System, which will send notification of the filing to the following:

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